

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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<u>TOWN OF FRAMINGHAM V. TOWN OF ASHLAND</u>)	
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REQUEST FOR DETERMINATION OF RATES APPLICABLE TO)	D.T.E. 02-46
TRANSPORTATION AND TREATMENT OF SEWAGE)	
PURSUANT TO INTERMUNICIPAL AGREEMENT)	
_____)	

REPLY BRIEF

OF THE

TOWN OF ASHLAND

REQUEST FOR DETERMINATION OF RATES
APPLICABLE TO TRANSPORTATION OF SEWAGE
PURSUANT TO INTERMUNICIPAL AGREEMENT

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Dated: October 31, 2003

1. **The IMA Supports Utilizing the Shared Pipes as a Factor in the Apportionment of Operations & Maintenance (“O&M”) Costs**

Ashland’s usage of only certain pipeline should be a factor in determining Ashland’s proportionate share of Framingham’s operation and maintenance costs (“O&M”). The Intermunicipal Agreement’s (“IMA”) support for this statement is indicated by its repeated references to Ashland’s limited use of Framingham’s system to certain “trunk-lines.” Exh. FR-14. The first instance is in the second paragraph of the IMA which specifically states:

WITNESSTH, that, WHEREAS, the **Town of Ashland desires to use certain trunk-lines** of the town of Framingham for transporting sewerage of the Town of Ashland to the sewers of the Metropolitan District Commission, . . . (Exh. FR-14, second paragraph)

The IMA does not say that Ashland’s sewerage will flow throughout the entire Framingham system. In fact, the IMA provides support in many instances that Ashland’s usage of the system is limited. While the IMA does refer to the Framingham “system” in several instances such as the “Town of Framingham agrees to receive and transport through its sewerage system to the sewers of the Metropolitan District Commission sewerage of the Town of Ashland. . .,” by also clarifying which “trunk-lines” Ashland can use in the second paragraph of the IMA and in Section 5 and by clarifying the Farm Pond Interceptor and Bates Road entry points in Section 1 and 2, it is clear that Ashland’s usage of the Framingham system is limited. Exh. FR-14. Ashland’s sewerage will not be permitted to flow and does not actually flow throughout the Framingham system. The entire Framingham system is not available to Ashland for Ashland’s sewage flow.

Nor is Ashland permitted to enter the Framingham system at any point of the Framingham system. The IMA is also very clear that Ashland is only permitted to connect at two points in the southern most part of Framingham’s system.

Specifically, Ashland is permitted to enter Framingham's system as follows:

1. The Town of Framingham agrees to receive and transport through its sewerage system to the sewers of the Metropolitan District Commission sewerage of the Town of Ashland as hereinafter set forth; and for this purpose to allow said Town of Ashland to connect its system to the Framingham system at the Farm Pond intercepting sewer situated at the New York, New Haven & Hartford Railroad yard, said connection to be installed . . . (emphasis added) Exh. FR-14 at Section 1.
2. The Town of Framingham further agrees to receive and transport through its system to the sewers of the Metropolitan District Commission additional sewerage of the Town of Ashland and to allow the said Town of Ashland to connect to the Framingham system at the 12" sewer located at the Boston and Albany Railroad at the junction of the Bates Road sewer. . . . (emphasis added) Id. at Section 2.

Ashland is not permitted to connect at any point and send its flow throughout Framingham's system. Ashland does not have rights to use the entire Framingham system.

The limitation of Ashland's usage to certain "trunk-lines" mentioned at two other times in the IMA also makes clear that Ashland is only entitled to use certain trunk-lines:

The parties hereunder agree that the annual charges and rates of discharge specified in this agreement shall be reviewable five years from the date of this agreement and at subsequent five year intervals; said agreement shall terminate when and if and at such time as Town of Ashland shall directly enter the Metropolitan District Commission system at which time the obligations of either party hereunder shall terminate; and the parties do further agree that the charges hereinbefore provided for in Paragraphs 2 and 3 hereof shall be in the form of bills by the Town of Framingham to the Town of Ashland in two installments, the first installment (one-half of the amount due) shall be billed to the Town of Ashland six months after **actual usage of the trunk-lines** is commenced and the balance to be billed at the expiration of one year from the time that **actual usage of the trunk-lines** is commenced, and subsequent bills and to be rendered every six months during the term hereof. Id. at Section 5.

In the limited instances when the IMA does refer to "system," it is important to read this term in context of the IMA as a whole so as to understand how this term relates elsewhere in the IMA with the terms "trunk-lines" and other qualifying terms.¹ For example, the IMA refers to

¹ Framingham evidently does not subscribe to interpreting the IMA by reading it as a whole as nowhere in its brief does acknowledge the IMA's triple reference to Ashland's usage of only certain "trunk-lines."

“payment for a proportionate share of the Town of Framingham’s capital investment cost of said system,” “fair and equitable proportionate share of the actual cost of the maintenance of said system” and “proportionate share of the cost of maintaining said system only.” Exh FR-14 at Section 3. Simply because these phrases contain the word “system” does not mean that Ashland should pay a portion of O&M costs for the entire system. The phrase “proportionate share” qualifies the term “system” as does Ashland’s usage of only certain “trunk-lines” on the first page and in Section 5 of the IMA. Id. The sections of the IMA regarding the “fair and equitable proportionate share of the cost of the maintenance of the system” should not be read independently without taking into account all of the sections of the IMA as whole to determine the intent of the parties per the IMA. A reading of “fair and equitable proportionate share” of the system should take into account the fact that Ashland only uses a very limited part of the system. Id.

The IMA discusses flow, trunk-lines, and terms such as “fair and equitable proportionate share of the actual cost of the maintenance of said system.” Id. at Section 3. Ashland’s proposed formula for O&M cost in its brief is easy to use and, more importantly, achieves a fair and equitable result. ASH-Brief, p.20.

2. **Historical Intent of the Parties to the IMA in Determining Original O&M Costs Is Unknown and Immaterial to Determining Future O&M Costs**

In its brief, Framingham makes sweeping conclusions as to the intent of the parties in determining the O&M costs Ashland was to pay. FR-Brief, pp. 7-8. In fact, however, it is simply not clear at all from the IMA how the parties determined the initial costs (\$3,000 for use up to one million gallons of the average daily flowage and \$2,000 for actual use above one million gallons up to an additional one million gallons of average daily flow) that Ashland would pay Framingham. Exh. FR-14 at Section 1. There is no evidence whatsoever in the IMA to show how the parties arrived at these sums. It is not clear at all whether the parties calculated anything to achieve the

above sums nevermind whether the sums were based on exclusively on flow, inch-miles, or both or some other method altogether. Nor do the parties anywhere prescribe in any manner in the IMA how the formula for O&M cost should be determined on an ongoing basis. And while it is true that the IMA does not use the term “inch-miles” per se as Framingham contends, it does specify “certain trunk-lines” entering at certain points (Farm Pond and Bates Road) and in order to account for trunk-lines in an O&M formula the parties would have had to measure the trunk-lines by some means whether in inch-miles or otherwise. Exh. FR-14 at Sections 1,2.

Given that the IMA references Ashland’s limited usage of the system (“certain trunk-lines”) and that Ashland’s payment should be “fair and equitable proportionate share” of the cost for maintaining the Framingham’s system, it is reasonable and just to account for Ashland’s limited usage by measuring those “trunk-lines” by inch-miles. Exh. FR-14. The Department should consider and reconcile all the sections of the IMA as a whole. In determining a “proper and just sum” the Department should consider the words “fair and equitable proportionate share of the actual cost of said system” along with Ashland’s very limited entry and usage of the system as limited to “certain trunk-lines” as repeated three times in the IMA. Id. Regardless of what the parties did or intended in the past in determining O&M costs, it is unknown and immaterial because the purpose of petitioning the Department is determine a fair solution going forward.

3. SEA’s Formula Does Not Result in a “Fair and Equitable” Apportion of O&M Cost

SEA’s formula does not result in a “fair and equitable proportionate share of the actual cost of said system” because it does not take into account that Ashland uses only very few “certain trunk-lines.” Exh. FR-14. SEA’s formula which is based solely on flow and O&M costs for the entire Framingham system and not Ashland’s actual usage of pipe, assumes that Ashland has free reign to enter Framingham’s system at any point and to send its sewage through any pipes throughout Framingham’s system. FR-Brief, p. 3. This simply is not true, accurate, fair or

equitable. Ashland's sewerage only flows through certain pipes. Exh. FR-14. Ashland's flow does not meander throughout Framingham's system. Nor does Ashland use any sewerage system infrastructure of Framingham's other than pipelines. June 18, 2003 Transcript, p. 80, lines 7-14. Ashland uses its own force mains to pump its flow. Exh. DTE-A-1-3.

4. In re Boston Gas Company, D.P.U. 18661 (1977) ("Boston Gas I")

In re Boston Gas Company, D.P.U. 18661 (1997) (hereinafter "Boston Gas I") is not analogous to the Ashland/Framingham arrangement for several critical reasons. In Boston Gas I, Hanscom Air Force Base sought a lower rate than Boston Gas was charging its other industrial customers on the grounds that Hanscom only used natural gas and not more expensive supplemental gas. Boston Gas I, D.P.U. 18661 (1997). As a result, Hanscom contended that it should not, therefore, have to pay for certain facilities used by Boston Gas to process, store and distribute expensive supplemental gases never utilized by Hanscom. Id. at pp. 5-6. The Department held that Hanscom was not entitled to a lower rate than Boston Gas' other industrial customers because Hanscom did, in fact, obtain a benefit from Boston Gas' production of supplemental gases. Id. Specifically, the Department held that:

If the Company [Boston Gas] did not have such supplemental gases available and the associated facilities for processing, storing and distributing them, **Hanscom would receive no gas for the previously mentioned five month period.** Therefore, despite the fact that Hanscom receives only natural gas, it is a completely erroneous assertion that it does not use and does not receive a benefit from the Company's extensive system. In a very real way Hanscom relies on this system as much as, if not more than, more other customers of the Company. Id. at 9.

This situation is unlike the Ashland/Framingham sewerage situation in several important ways. First, Ashland is not seeking a lower rate in comparison to the other towns Framingham may serve and does not, in fact, even know the rates that Framingham charges other towns. Nor is Ashland, who is purchasing the right to utilize the Shared Pipes on behalf of all of Ashland's

residents analogous to that of a single resident of Framingham who is using the system as part of the community of Framingham and is entitled to broader benefits and rights.

Second, Hanscom argued that it received no benefit from the ability of Boston Gas to pump supplemental gas and therefore, it should not be required to share in the costs of its production and transportation. Id. at 6. The Department found against Hanscom however. Id. at 8-9. The basis for the Department's decision was that Hanscom did in fact obtain a very real benefit from Boston Gas' production and transportation of supplemental gas. Id. at 9. The Department concluded that "[i]f the Company [Boston Gas] did not have such supplemental gases available and the associated facilities for processing, storing and distributing them, Hanscom would receive no gas for the previously mentioned five month period." Id. at 9. This is unlike the Ashland/Framingham situation where Ashland is simply transporting its sewage from one point to another point through the Shared Pipes. Ashland is not dependent on Framingham's pump station or the other material infrastructure of Framingham's sewer system. June 18, 2003 Transcript, p. 80, lines 7-14. Ashland uses its own force mains to pump its flow. Exh. DTE-A-1-3. Only the Shared Pipe is necessary for the transportation of Ashland sewage. In fact, Framingham witnesses admitted that Ashland "probably could do without" pipelines located along Nancy Lane. June 18, 2003 Transcript, pp. 101, lines 18-22. Likewise, Framingham witnesses admitted that Ashland "probably could do without the pipeline along Campello Road. Id. at p. 102, lines 2-6. Likewise still further, Framingham witnesses also admitted that removing the whole section from Winch Park in Framingham would probably not prevent Ashland sewage from flowing through the Shared Pipes. Id. at p. 102, lines 7-12. In sum, unlike Hanscom which was dependent on Boston Gas' production of supplemental gas so that it could obtain its natural gas, Ashland is not dependent all parts of Framingham's system in order for the Shared Pipes to function.

The other portion of Framingham’s argument is taken completely out of context and is a complete misreading. Framingham states that the Department found that each customer of the gas company, whether a homeowner or industrial user, had a “distribution system” beyond the company’s meter, and that the size of that distribution system (“whether . . . many miles of mains or only a few feet of pipe”) had no effect on the company’s cost of delivering gas to each of its customer. Id. at 11-12. Framingham has completely misread this section and it has no application to the Ashland/Framingham matter whatsoever. In that section, Hanscom argued that because Hanscom had its own distribution system and other Boston Gas’ industrial customers did not, there were savings to Boston Gas from which Hanscom should benefit. In sum, Hanscom argued that it was entitled to a price break. Id. at 11. The Department held that because Boston Gas was only responsible for bringing its gas to the relevant meters, it made no difference to Boston Gas whether its customers had distribution systems or not. Id. at 12. The Department concluded that “whether [each industrial customer’s distribution] “system consists of many miles of mains or only a few feet of pipe, the [Boston Gas] Company is completely unaffected.” Id. But in making this statement, the Department meant that just because Hanscom has its own distribution system which it uses solely, no matter of many miles of mains or feet of pipe, does not affect the Department’s decision. The Department was not referring in any way to Hanscom’s limited usage of Boston Gas’ system or pipeline.

Ashland does not have a distribution system unlike Hanscom. And also unlike Hanscom, while Ashland does maintain its own pipeline in Framingham, it is not seeking a price break from Framingham because Ashland owns this pipeline. Framingham’s quotation of this section was a misreading of the relevant section of Boston Gas I and misleading in any possible inference.

5. **In re Boston Gas Company, D.P.U. 90-17/18/55 (1990) (“Boston Gas II”)**

In re Boston Gas Company, D.P.U. 90-17/18/55 (1990) (hereinafter “Boston Gas II”) is also not analogous to the Ashland/Framingham arrangement for several critical reasons. Framingham is parsing out the facts and holding of this case in such a way solely to meet its needs. At the same time, Framingham is unjustly oversimplifying the effects of its very different fact pattern and nature of industry in the Department reaching its decision. In Boston Gas II, the Wakefield Municipal Light Department (“WMLD”) challenged the rates Boston Gas assessed to WMLD for natural gas. Boston Gas II, D.P.U. 90-17/18/55 (1990). As basis for its argument, WMLD argued that because it owns and maintains its distribution system and it resells gas to its customers, WMLD is a wholesale customer. Id. at 24. In addition, WMLD argued that since it served only with high and intermediate pressure mains, it should not be allocated expenses relating to Boston Gas’ low-pressure distribution system. Id. Lastly, WMLD asserted that Boston Gas’ transmission and distribution (“T&D”) system should be disaggregated by pressure in order to allocate its costs and that this could be done in a manner similar to the allocation of T&D based on voltage levels in electric utilities. In response, Boston Gas [the Company] asserted that:

... its distribution system cannot be broken down along functional lines, such as artery-like high-pressure pipe moving gas from take stations to capillary-like low-pressure pipe that brings gas to customers, because its distribution system was organized by geography and historical accident. The Company asserts that **both residential and commercial customers can be served from either high-, intermediate, or low-pressure pipe** and that the geographical orientation of the Company’s distribution system resulted from the historical accident of the Company’s small predecessor companies having independently developed their own gas distribution systems at varying pressure levels. The Company states that the **breakdown of pressure systems by historical accident and geography, rather than by function or by rate class groupings, renders impossible an equitable cost allocation based on pressure**, and that its current method for allocating mains and regulators is appropriate. Id. at 27-28.

In its holding, the Department found for Boston Gas for several reasons. Among them, the Department found that WMLD’s methodology for determining cost based on the pressure type pipe

it used was not readily or accurately measureable. The Department also found that allocating costs by the pressure of the pipes (whether low, high or intermediate) could not be easily allocated to rate class. Id. at 29. In addition the Department found that all Boston Gas customers could be served by any type of pipe and that the pressure level was not a class-specific cost-causative factor on the Company's system. Id. at 30.

The fact pattern which is the basis of the Department's decision is not analogous to the current situation. Unlike WLMD, Ashland is not seeking to determine O&M cost based on the nature of the pipe, pressure or otherwise, it uses. Rather, Ashland is seeking to determine O&M cost based on in part the discrete and limited amount of pipe it uses. Further, the Department determined that it could not justify using the pressure differences to determine cost for reasons which are simply not applicable to whether the Department can determine rates in this Ashland/Framingham matter based on the amount of pipe actually used by Ashland. Id. at 29-30. In Boston Gas II, the Department found that it would not measure pressure as WLMD requested because rate classes, a controlling factor in the Department's decision, was not served by similar types of pressure systems. Id. The Department concluded that, for this reason, a rate based on pressure was not measureable. Id. In this Ashland/Framingham matter, however, there are no rate classes which have to be the Department's focus. Instead, Ashland's usage of pipe in the Framingham system, of Shared Pipe, can be utilized and is entirely measurable.

Unlike Boston Gas customers, Ashland is not and cannot be served by any and all of Framingham's sewage pipes at any time. Exh. FR-14. Rather, Ashland must use certain specific trunk-lines to reach the Arthur Street Pump Station. Id. Ashland's usage of certain pipes was not a "historical accident" or due to "geography." Boston Gas II, D.P.U. 90-17/18/55(1990) at 27-28. This arrangement was decided by the two towns. Further, it is not "historical accident" that Ashland's flow does not utilize a Framingham force main. To the contrary, the nature of the Shared

Pipes is not due to historical or geographical accident but to the function for which they were intended at the time they were installed. There are no force mains in the Shared Pipe because there was no need for force mains by design. June 18, 2003 Transcript, p. 80, lines 7-14. Ashland uses its own force mains to pump its flow. Exh. DTE-A-1-3.

In Boston Gas II, because the Department found that all customers could be served by high, intermediate or low pressure pipelines, the Department concluded that pressure level of T&D plant is not necessarily a “class-specific, cost-causative” factor on the Company’s system and that a cost allocation of T&D plant based on pressure is not appropriate in this case. Boston Gas II, D.P.U. 90-17/18/55(1990) at 30. But in the Ashland/Framingham matter, the amount of pipeline used by Ashland is a direct cost-causative factor. Ashland only uses a very small discrete portion of the Framingham system. The O&M costs for the Shared Pipe portion of the system is markedly smaller in comparison to all of the O&M costs necessary to maintain the rest of the Framingham system. As such, the limited amount of pipeline Ashland uses, the Shared Pipe, is a cost-causative factor in determining O&M costs.

6. Ashland Is Not Analogous to an Individual Framingham Resident

Ashland is not analogous to a Framingham resident using the Framingham system. Ashland is not a resident of Framingham. Nor is Ashland like a Framingham resident because it submits significantly more sewerage than any average Framingham resident. Further, unlike a Framingham resident, Ashland cannot submit any amounts of sewerage it wants into the Framingham system. In addition, there are certain privileges that Framingham residents benefit for which Ashland does not. For example, even though Ashland has contributed and will contribute in the future to a fair and equitable proportionate share of Framingham’s operation and maintenance and capital costs, unlike a Framingham resident, Ashland does not have any rights within the town of Framingham regarding the system other than those drafted into the IMA. Unlike a Framingham resident, Ashland does not

have input into most of the decisions Framingham makes regarding Framingham's sewer system. Nor does Ashland have the same standing or rights and benefits as a Framingham resident with regards to Framingham's sewer system and with other Framingham infrastructure. Further, Ashland is unlike a Framingham resident because a Framingham resident impliedly makes bargain, as does every resident of a community, that in exchange for these rights and benefits, the Framingham resident would agree to lump all of its services together (whether for sewerage, water, schools, etc.) and to pay for them jointly without having them exactly apportioned to each individual resident as they are used. Ashland sees no such benefit.

For these reasons, it is irrelevant how each town apportions its costs amongst its own citizens. Framingham contends that because Framingham does not apportion its costs amongst its residents by measuring every inch-mile of pipe that each resident uses, Framingham should not have to take into consideration the limited usage of Framingham pipeline that Ashland actually uses. FR-Brief 21. But that is comparing apples and oranges. For Framingham to try to measure the inch-miles of pipes used for each and every of its resident, while it would be the fairest method of determining true costs for each resident, its costs to Framingham would vastly outweigh the benefits to each of its resident. In contrast, Ashland is not seeking for the Department to consider the pipelines of each of Framingham's residents. Ashland is only requesting that the Department require the measurement of the one continuous pipeline used by all of Ashland's citizens in determining O&M costs, the Shared Pipe, and the inch-miles of pipe in the tributary area. In this instance, as these measurements have already been largely performed, the burden of doing so does not outweigh the benefit and fair and accurate result of doing so.

7. Sulfates/Sulfides

Framingham insinuated in its Brief that Ashland's contribution of sulfates/sulfides to the Framingham system have affected the useful pipe life of the Shared Pipe. FR-Brief, pp. 19-20. Framingham has provided absolutely no support for this statement. Framingham has provided absolutely no evidence to show that its pipes have been corroded, that they were corroded due to excessive sulfides/sulfates over the past forty years (as opposed to normal wear and tear) and that the cause of any such harm over the past forty years was due to Ashland's flow as opposed to Framingham's pipes.

The sulfate/sulfide issue should not be a factor in any determination regarding an appropriate rate for Ashland's usage of the Shared Pipes in Framingham's system. Going forward, Ashland's and Framingham's flow will both be monitored by the MWRA. Exh. DTE-A-4-1. Ashland and MWRA are in the process of drafting a settlement agreement to address Ashland's compliance with the MWRA's 0.3 mg/l sulfide limits and to establish a schedule under which Ashland will take actions to reduce its discharge of sulfides to the MWRA sewer system. Id. As part of its discussions with the MWRA over the past several years, Ashland has performed the following significant work to reduce the biochemical oxygen demand and the discharge of sulfides or sulfates. Id. For example, Ashland has nearly completed with the relining of the Chestnut Street discharge line. Relining will reduce oxygen leaks and will help to remedy any dips or cracks in the system so that the sewage flows more efficiently. Ashland is also installing aeration equipment in the Chestnut Street Pump Station which will help to provide the oxygen transfer from the wastewater necessary to prevent and reduce the amount of sludge and grease from turning anaerobic. Id. Ashland is also constructing a new Brackett Road Pump Station. Ashland is replacing the existing station with a brand new station. The new station will be bigger and will be more efficient in handling Ashland's sewage flow. This will decrease any flow stagnation and

therefore reduce sulfide growth. The new station will also have built-in scrubbers which will prevent the build up of grease which may lead to sulfide growth. Built-in scrubbers will complement Ashland's current efforts to have the stations cleaned periodically. In addition, the Bracket Road Pump Station will have controls which will allow Ashland to make programmed and fine-tuned adjustments in order to accommodate and respond to flow times and amounts. As a result, Ashland expects this will also improve sewage flow and will prevent any existing stagnation. Lastly, the new Bracket Road Pump Station will permit Ashland to add chemicals at the station to reduce and eliminate sulfates from flowing past the Bracket Road Pump Station. While chemicals are added at various locations prior to the Bracket Road Pump Station, this feature of the Bracket Road Pump Station serves as an additional backup to reduce sulfate build-up. Id. Ashland has contracted for engineering services to perform a Comprehensive Wastewater Management Plan. The first draft is scheduled for December 2003. Ashland anticipates that this Comprehensive Wastewater Management Plan will improve upon the efficiency of Ashland's wastewater system. Id. Ashland has completed I/I investigation, cleaning, removal entirely for Sub Basins I, II and III. Ashland has completed investigation and cleaning for Sub Basin IV and I/I removal expected to be completed by 2004. Investigation of the Sub Basins involved inspecting every foot of sewer lines and manholes by the Ashland's resident engineer by an internal camera. As a result of the I/I investigation, cleaning and removal, Ashland expects its sewerage system to be tighter and more efficient with less possibility for oxygen inflow and smoother travel for sewage flow. Id. Ashland has implemented a wastewater maintenance/ monitoring program that maintains Ashland's entire system. Weekly samples from location 0101 (Chestnut Street) and 0102 (Bracket Road) have and will continue to be collected and tested for B.O.D./ 5 day, nitrate, nitrogen, sulfate and sulfide. Ashland has been in continuous communication with Nyacol and has collected samples from its batch treatment process. At this time, Nyacol's samples are in compliance with the sulfide

limitations set by MWRA for Ashland. It is expected that MWRA will be providing Nyacol with a special permit for sulfide limits and a compliance schedule by the end of this month. Id. Nyacol is currently under a MWRA mandate to haul its high sulfate wastewater to Fitchburg during June through November. Ashland has installed three Bacta-Pur Bactivators biotechnological treatment stations at Northeastern University, Ashland High School and Chestnut Street Station. Bacta-Pur Bactivators discharge enzymes into the wastewater which solubilize sludge and grease. These two components contribute to the production of sulfides through anaerobic composition. Beginning in June 2003, Ashland will implement a commercial oil/grease program for all restaurants and food establishments in Ashland. It is expected that this program, which very few other communities have implemented, will reduce oil and grease build-up and improve the overall efficiency of Ashland's sewerage system. The program will be conducted in tandem with Ashland's residential cross connection program. Id.

As a result of these proposed agreements with the MWRA that Ashland and Framingham will strike with the MWRA, neither town will have direct control over sulfate and sulfide releases. The MWRA will be the monitoring and controlling agent on sulfides for both communities. If either community fails to adhere to those guidelines, they will be appropriately penalized by the MWRA. It is unnecessary and duplicative for either town to have input into the sulfide and sulfate issues in the future.

In sum, Framingham has provided absolutely no evidence to show that the Shared Pipe has been corroded, that it was corroded due to excessive sulfides/sulfates over the past forty years (as opposed to normal wear and tear) and that the cause of any such harm over the past forty years was due to Ashland's flow as opposed to Framingham's flow. As both towns are currently negotiating with MWRA the limitations on sulfate/sulfide emissions and the measures which must be taken to

correct any such problem in the future, sulfate/sulfide emissions will be controlled and monitored by the MWRA and town involvement is unnecessary and duplicative.

8. Costs for Ashland to Build its Own Connection to the FES and Effect on Department's Determination of O&M Costs

Framingham has claimed that Ashland has avoided having to incur the substantial capital cost of building its own connection to the Framingham Extension Sewer ("FES"). FR-Brief , p. 20. Prior to Framingham's filing of its petition, Ashland explored and seriously considered building a connection to the FES independent of its current IMA with Framingham. In Ashland's decision to delay the construction of such a connection, there were considerable other concerns other than Ashland's current IMA arrangement with Framingham. Whether or not Ashland decides to construct a connection to the FES in the future is Ashland's decision and not Framingham's to make. Ashland may decide that while the connection is certainly more expensive to build than its payments under the IMA at this time, it may be a wise decision for Ashland to build this connection in the future. Depending on the arrangements Ashland is able to make and the grants Ashland is able to obtain from the MWRA and other sources, Ashland may be able to reduce this \$6,000,000 figure substantially. That figure was purely an estimate and is far from firm. Regardless, whether or not Ashland decides to proceed with this or any other project is immaterial to the Department's decision on the fair and equitable proportionate O&M and capital costs.

9. Ashland's O&M Formula Would Ensure Earnings Stability Equal to Framingham's Formula

Ashland's O&M formula would ensure earnings stability for Framingham equal to Framingham's O&M formula. To the contrary, Framingham somehow concludes that Ashland's formula would result in a figure that could "vary widely from year to year." FR- Brief, p. 22. Given that Ashland's and Framingham's proposed formulas differ only in that Ashland requests that Ashland's usage of the Shared Pipe in inch-miles be taken into account so as to reflect that Ashland

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only uses a very small portion of the Framingham system, this statement does not make sense. It is not as though every year the inch-miles of Shared Pipe is going to change drastically. The only figure which would change to any degree would be the flow percentage and that would change in Framingham's formula as well.

10. The Newton Wellesley IMA Is Analogous to the Ashland/Framingham Arrangement

In the agreement between Wellesley and Newton, Newton permits Wellesley to use certain "Sewerage Facilities." Exh. DTE-3. "Sewerage Facilities" is defined as the "Cochituate Aqueduct Sewer and the Farlow Hill Sewer from the beginning of the Cochituate Aqueduct Sewer near the Cochituate Aqueduct Pumping Station to the MDC (now MWRA) Connection at Oak Square." Id. at p. 2. This is analogous to the Ashland/Framingham IMA where Ashland uses certain trunk-lines beginning at Farm Pond Interceptor and at Bates Road and proceeding directly to Arthur Street. Exh. FR-14 at Sections 1, 2.

In the Newton/Wellesley IMA, Newton charged Wellesley for restorations, maintenance, capital projects or repairs ("repairs") on the Sewerage Facilities based on percentage of each parties' flow through the Sewerage Facilities multiplied by the costs for such repairs. Exh. DTE-3 at p. 5. Similarly, Ashland is requesting that they be charged based on flow as well as the inch-miles of pipeline actually used, the Shared Pipe, which is analogous to the Sewerage Facilities. Interestingly, no where in the Newton/Wellesley IMA does Newton makes any mention of any inability to determine the costs for such repairs and makes no mention of the administrative costs involved in tracking such costs. Whereas, throughout the hearings on this matter, Framingham indicated that it would be nearly impossible and exceedingly expensive for it to track repairs by written work order or otherwise. July 16, 2003 Testimony, p.234, lines 1-13.

The Newton/Wellesley IMA is comparable to Ashland/Framingham's IMA because both involve a simple pass through of one community's sewerage through another community en route to

the MWRA for treatment. Framingham seems to think it significant that the Newton/Wellesley agreement makes no mention of Wellesley using Newton's "system" whereas Ashland/Framingham's IMA does do so. FR-Brief at 28. It is not significant. The likely reason why the Newton/Wellesley IMA is because the Wellesley did not use Newton's system except for the Sewerage Facilities. But it is not as if Wellesley's sewerage did not flow through Newton's "system." So whether or not the actual word "system" is in the Newton/Wellesley IMA is immaterial. Similarly, Ashland uses certain trunk-lines like Newton uses the Sewerage Facilities, which are situated in the systems of Newton and Framingham respectively. But neither Wellesley nor Ashland use Newton's or Framingham's "systems" otherwise.

Framingham has attempted to draw significance in the size of the Newton pipe and that it was, in fact, a water pipe at one time. FR-Brief, p. 28. The size and the nature of the pipe in the past, prior to its current usage, have absolutely no bearing on this matter and are simply an intentional tactic to attempt to complicate this matter further unnecessarily.

The pipes shared by Newton/Wellesley and Ashland/Framingham are similar in that they both have connecting pipes and do not simply run from point-to-point. Framingham contends that the Newton/Wellesley pipe did not have many connecting pipes and thus, Newton would not have the same concerns as Framingham about the "shared" pipe surcharging and backing up into other sewer pipelines. FR-Brief, p. 28. Note that Framingham does admit there are at least some connecting pipes. Id. Ashland likewise agrees that there are several lateral connections to the Cochituate aqueduct. August 20, 2003 Transcript, p. 517. Specifically, these connecting pipes enter from the Wellesley Boulevard Pump Station, the Quinobequin Road Pump Station and the Waban Avenue Pump Station. In addition, the Wellesley and Newton sewage flows not only through the Cochituate aqueduct but this aqueduct extends and becomes the Farlow Hill Sewer line in Newton. Along Farlow Hill Sewer, there are additional connections at Ricker Street in Newton.

In sum, it is not as though Wellesley's sewage flows through a pipeline which has no other connections. Both the shared pipeline in Newton and the Shared Pipe have connections. For that reason, the Newton and Framingham pipes are in fact very similar. But even if assuming arguendo that Newton did not have any connecting pipes at all, that would not change the fact that Newton took into account Wellesley's limited usage of its system in calculating the appropriate O&M cost and did not charge Wellesley as if Wellesley's sewage flowed throughout Newton's sewerage system.

Because Newton's, like Framingham's, shared sewerage pipes are similar in that they have connecting pipes at several locations, both entities have concerns about surcharging in Newton and Framingham respectively. For that reason, in the event that there is a failure of the Sewerage Facilities in Newton, Wellesley agreed to share in a portion of the costs required to be paid by Newton on account of claims of property damage or personal injury from Newton residents or businesses arising from a failure of the Sewerage Facilities or an exceedence of capacity of the Sewerage Facilities. Exh. DTE-3, 3(e),(f). This is unlike Framingham in that Framingham has tried to claim that overflow pipes should be part of the Shared Pipe even though it has no evidence that Ashland actually uses the overflow pipes. To the contrary, Newton did not claim that any overflow or adjacent pipe be considered part of the Sewerage Facilities. Rather, Newton simply charged a penalty when in the rare instances Wellesley's Sewerage Facilities failed or where Wellesley's sewage flow exceeded the capacity permitted under the Sewerage Facilities. Id.

11. Westborough/Hopkinton IMA Is Analogous to the Ashland/Framingham Arrangement

The Westborough/Hopkinton IMA is also analogous to the Ashland/Framingham IMA. The Westborough/Hopkinton agreement requires Hopkinton to contribute to its proportionate O&M costs to operate and maintain "common sewer system" as that part of the Westborough system shared by both towns as well as a "non-common sewer system" as that part of the Westborough

system used only by Hopkinton. Exh. ASH-18, p.3. In discussing the proportionate share of the O&M costs Hopkinton shall pay, the Westborough/Hopkinton IMA states “5.4 HOPKINTON’S proportional share of the operational and maintenance costs as defined in Section 1.6 associated with the Common Sewer System shall be in accordance with the following formula. . . .” The formula referenced includes Section 5.5 states “For the purpose of determining O&M costs, HOPKINTON’S proportionate share of all O&M costs shall be calculated by the following formula. . . .” The components of the formula also explicitly makes clear that the formula is based on the “common sewer system.” For example, one part of the formula states: “EN= Total annual electrical cost of new pup station(s) in the common sewer system for the calendar year being calculated.” Id. at 10.

In sum, in the Westborough/Hopkinton IMA, Westborough charged Hopkinton its “proportional share of operational and maintenance costs as defined in Section 1.6 associated with the Common Sewer System.” Id. at 10. For purposes of the Ashland/Framingham matter, it is irrelevant exactly where the common sewer system is located. It is sufficient that in its brief, Framingham admits that the “common sewer system” is a subset of Westborough’s entire sewer system. FR-Brief, p.29. The relevant point is that in determining a proportionate share of O&M costs, Westborough factored into its formula the fact that Hopkinton only used a portion of Westborough’s sewerage system, the “common sewer system.” Id. at 10. Likewise, Ashland should not be liable for a proportionate share of O&M costs of the entire Framingham system without regard to the fact that Ashland only uses a very small portion of Framingham’s system. Ashland uses the Shared Pipes just as Hopkinton uses the “common sewer system.”

12. **Abington/Brockton IMA**

Framingham refers to the Abington/Brockton IMA as a reasonable example of how Ashland's O&M costs should be calculated based on Framingham's methodology. Exh. FR-5. What is puzzling about Framingham's argument is that the original Abington/Brockton IMA actually supports Ashland's methodology. The original Abington/Brockton IMA it states:

Town of Abington Annual Charge. It is agreed that the City of Brockton shall determine an annual charge, to be paid by the Town of Abington, for **those portions of the Brockton Sewerage System jointly used by both** the Town of Abington and City of Brockton. This charge shall reflect **Brockton's costs for operating and maintaining these common facilities** and shall be **proportioned in relation to the measured flow contributed by the Town of Abington into these facilities.** Id. at p.4.

In essence, the Abington/Brockton IMA states that Brockton looked at those O&M costs necessary to maintain that part of the Brockton Sewerage System used by both entities. Then Brockton applied the ratio of flow of each entity to this O&M cost. Id. Contrary to Framingham's argument, this arrangement is exactly what Ashland is proposing. Like the Abington/Brockton IMA, Ashland is proposing that Ashland's limited usage of the pipeline be taken into account (inches of pipeline), the ratio of each party's flow and the O&M cost for the tributary area. Interestingly, again, unlike Framingham, Brockton does not even mention having any difficulty with figuring out what costs were attributed to that portion of the Brockton Sewerage System shared by both Abington and Brockton. Id.

The Abington/Brockton was later amended to include a "Transport Fee" for the transport of Abington's sewage through Brockton to Brockton's treatment plant. Id. at Amendment 3. Framingham alleges that Ashland's cost would be in \$425,498 if a similar formula were applied to Ashland but Framingham gives absolutely no support for how this figure for Ashland was calculated. FR-Brief, p. 27. What is not clear from the IMA, regardless, is what part of Brockton's Sewerage System was actually shared by Abington. It is not clear it is even analogous. Does

Abington's sewage flow directly from its connection in Brockton like Ashland's? Or does Abington's sewage flow meander throughout Brockton's system? The IMA provides no answers. If Abington's flows throughout Brockton's system, it would be difficult and impractical for Brockton to assess Abington on proportion of the system actually used. In contrast, Ashland only uses a very small discrete portion of the Framingham system and should be assessed only for this usage.

Furthermore, Abington's flow just as all other flow in the other IMAs cited by Framingham, is all treated in the towns through which they flow ("the host towns"). Exh. FR-5-9. Given that the bulk of the cost to the host towns is due to treatment, it makes sense that the host towns would look to flow to determine costs because flow is the primarily pertinent data in determining the costs for actually treating the sewage. These IMAs are unlike the Ashland/Framingham IMA because Ashland is simply utilizing Framingham pipeline to transport its sewerage directly to the MWRA. Exh. FR-14. The MWRA, not Framingham, treats Ashland sewage. As such, the pertinent information for limited and discrete pipeline used to transport Ashland's sewage is flow and inch-miles of pipeline to determine allocable costs. Likewise, given that the MWRA's primary and end service to its communities is the treatment of its communities' waste, it makes sense that the MWRA would focus on the flow of each community and not the amount of pipeline they actually use.

13. Ashland Did Not Have Framingham's Flow Data for the Shared Pipes When It Originally Used the IBT Ratio

Framingham contends that Ashland had Framingham flow data at the time Ashland determined the IBTA formula. FR-Brief, p. 41. Ashland may have had Framingham flow data for the entire system at the initial stages of this proceeding, but Ashland did not have data for Framingham's flow through the Shared Pipe. Given some independent analysis of the tributary

area, Ashland is willing to agree that 60% of Framingham's flow from the tributary area flows into the Shared Pipe.

14. There Is a Strong Nexus between O&M Costs and Inch-Miles of Shared Pipes

There is definitely a nexus between the O&M costs and the inch-miles of Shared Pipes used by Ashland. Framingham claims otherwise. FRA-Brief, p. 42. The O&M Costs for the Shared Pipes is significantly less than the O&M costs for all of the pipes in the entire Framingham system. Ashland only uses the Shared Pipes. Therefore, Ashland should only have to pay O&M costs for the Shared Pipes because those are the only pipes Ashland affects. The Shared Pipes are measured in inch-miles. For these reasons, there is a nexus between the Shared Pipes used by Ashland.

15. If a Segmented Formula is Used (Measuring Flow Through each Shared Pipe Segment), It Continues to Make Sense for Ashland's Metered Flow to Be Utilized and Framingham's Flow Be Measured by House Counts.

If the Department were to wish to take into account flow in each Shared Pipe segment as part of its formula to determine apportionment of O&M costs, it is perfectly reasonable for the numerator (Ashland's flow) to be determined by meter and the denominator (Framingham's flow) be determined by house counts. Framingham claims this unfair. FRA-Brief, p. 49. It makes sense to use Ashland's metered flow and Framingham's flow measured by house counts. Ashland's flow can increase or decrease depending on the day. In that sense it is not constant. But Ashland's flow is constant in the sense that once it leaves Ashland Pump Stations, there are no other pipelines which supply Ashland's additional flow. August 20, 2003 Transcript, p. 529, lines 7-17. Because Ashland's flow is constant in this way, there is no doubt what Ashland's flow is in each Shared Pipe segment. This is unlike Framingham's flow which increases as connecting pipes in Framingham add to Framingham flow on its way to Arthur Street. As a result, as Framingham's flow is different in each pipe segment and its relative percentage in comparison to Ashland's flow, to capture

Framingham's flow in each Shared Pipe segment, it would be necessary to either meter Framingham's flow or to perform house counts for each Shared Pipe segment.

Framingham also unnecessarily complicates and incorrectly exaggerates the time and effort necessary to collect the "house count" data from an assessors' office. In its testimony, Ashland did not say that it was necessary to actually count the number of bedrooms in each house, the lanes in a bowling alley, the number of chairs in a barber shop. September 23, 2003 Transcript, pp. 728-729, lines 23-24, 1-29. Rather, assessors offices generally keep capture and track of such information automatically for their own purposes. No additional labor would need to be performed other than utilizing the assessor office data. Assessors offices are also required to update their data for their own purposes on a regular basis. The additions of bedrooms to homes and the addition of a new fifty-seat restaurant, for example, would be captured in those updates that the assessor office would have to perform regardless of whether a "house count" method were used. And while it is true that an outside consultant would likely need to be retained to apply the assessor office data to both parties' liking, that cost would be exceedingly less and much more reasonable than the cost of installing meters at every junction of connecting pipe to the Shared Pipe. September 23, 2003 Transcript, p. 230.

16. Ashland Agrees to Install Parshall flume at Chestnut Street but Has No Obligation Under the IMA to Install Metering Devices

The IMA only requires Ashland to provide Parshall flumes and not metering devices. Exh. FR-14, p. 1. Framingham states that the IMA requires Ashland to install metering devices. FRA-Brief, p. 51. The IMA specifically refers to the installation of Parshall flumes only. Exh. FR-14, p. 1. The Parshall flume is a measuring device but it is not a metering device. June 18, 2003 Transcript, p. 85, lines 4-13.

Specifically, the IMA states:

The Town of Ashland agrees to install a Parshall flume at each point of discharge into the Framingham system and to keep and make available at all reasonable times pumping station records. Exh. FR-14. at Section 4.

Ashland would be willing to comply with the letter of the IMA requirement that it install a Parshall flume device at the Farm Pond Interceptor Station. As there is currently a Parshall flume device in place at the discharge point at Bates Road, there is no need to install a Parshall flume device there. July 16, 2003 Testimony, pp. 419-420, lines 20-24, 1-7. It is Ashland's contention that the MWRA meters currently in place have been relied upon by the MWRA and are reliable. August 20, 2003 Testimony, pp. 613, lines 13-14. The MWRA meter at Chestnut Street Pump Station is located at the Parshall flume in the inlet channel inside the station. The MWRA meter at Brackett Road Pump Station is located at the intersection of Douglas Street and Brackett Road in a manhole inside a 12" sewer upstream of the station. Ashland would be willing to comply with the letter of the IMA requirement that it install a Parshall flume device at the Farm Pond Interceptor. As there is currently a Parshall flume device in place at the discharge point on Bates Road, there is no need to install a Parshall flume device there. Id.

The only reason to install additional meters to determine Ashland flow instead of using the existing MWRA meters would be to capture any infiltration and inflow into Ashland's discharge lines. Ashland contends that there is no need to install any additional meters to determine Ashland's flow. Infiltration and inflow in Ashland's lines is practically non-existent by definition. August 20, 2003 Transcript, pp. 526-527, lines 17-24, 1-24. The pipe leaving the Brackett Road Pump Station is a 6" force main. This is a pressurized line. Because it is a pressurized line, there is no infiltration into that line. In the engineering profession no allowances are made in designing force mains for infiltration. Id. The force main from the Chestnut Street Pump Station, a 16" force main, is also pressurized line and would also not be subject to any infiltration. The other segment of the discharge line from Chestnut Street Pump Station is an 18" gravity sewer which has been

substantially rehabilitated in the past two years. Ashland replaced this sewer in 2001 with one whose alignment eliminated the prior siphon and sharp bend that restricted flow. As is routine when installing sewers, the new pipe was pressure tested. The pressure test indicated that there were no leaking joints. Therefore, that there is virtually zero infiltration in that gravity line section. The Chestnut Street force main was also pressure tested at that time and found to be leak free. Id.

CONCLUSION

While Ashland disagrees with the applicability of Boston Gas II to this matter, Ashland agrees with the Department's aim to determine rates with "efficiency, simplicity, continuity, fairness and earnings stability." See Boston Gas II, D.P. U. 90-17/18/55 at p. 12. Framingham has contended its formula is simpler than Ashland's formula. To the limited extent that it does not contain an inch-mile/Shared Pipe component at all, it is simpler, but this is exactly what makes the Framingham formula also unfair. Framingham's formula is so simplistic as to be too crude a tool to achieve a fair result. It would completely ignore Ashland's limited usage of its system. Ashland's formula as summarized in its brief on page 20 is as simple to use as possible in order to achieve a fair and equitable result. It essentially contains the same components as Framingham's formula but adds the additional and necessary component of inch-miles. ASH-Brief, p. 20. The parties know the length of the Shared Pipe and the total inch-miles in the tributary area including the Shared Pipe in order to achieve an appropriate inch-miles ratio. ASH-Brief, pp. 4, 20. Framingham has attempted throughout this process to complicate the usage of inch-miles unnecessarily by attempting to include overflow pipes without actually proving that Ashland actually uses them in an attempt to complicate and cause dispute regarding this essential element. To not include an inch-mile ratio, would unfairly burden Ashland with excessive costs for which Ashland has no responsibility. While simplicity is important in determining rates, the Department should balance that need with the greater need for fairness and equity. For these reasons, Ashland respectfully requests that the

Department determine the fair and equitable proportionate share of O&M and capital costs in accordance with Ashland formulas as outlined in Ashland's Brief.

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Dated:_____

CERTIFICATE OF SERVICE

I, Maureen P. Hogan, hereby certify that on this ____ day of October 2003, I served the foregoing by mailing a copy first class, postage prepaid, to:

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